



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



Sunset View, LLC
Attn: Kathy Hennessy
460 Route 101 Unit 9
Bedford, NH 03110

Re: Bedford West Convenience Center
Bedford, New Hampshire
EPA # 0196220

**ADMINISTRATIVE ORDER
No. WD 02-046**

December 5, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Sunset View, LLC pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Sunset View, LLC, operating under the trade name of Bedford West Convenience Center, is a New Hampshire limited liability company having a mailing address of 460 Route 101, Unit 9, Bedford, NH 03110. Kathy Hennessy is the agent for service of process and water system representative.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants which may have an adverse effect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300 *et seq.*
2. Sunset View, LLC is the owner of a water system serving a strip mall located in Bedford, New Hampshire ("Water System"). The Water System is a transient, non-community water system as defined in RSA 485:1-a, X and Env-Ws 302.02(ca).

I. BACTERIA MONITORING

3. Env-Ws 315.01 requires all transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.
4. Env-Ws 325.05 requires transient, non-community water systems serving fewer than 1,000 people to submit a minimum of one sample every six months the system is open to the public to test for the presence of total coliform bacteria, and one sample quarterly following the presence of total coliform bacteria in the water sample.
5. Due to the presence of total coliform bacteria in the September 1995 bacteria sample, Env-Ws 325.05 requires the Water System to routinely collect one sample during the scheduled sampling months of February, May, August, and November of each year.
6. On April 5, 2002, DES issued a Letter of Deficiency ("LOD") to the Water System for failing to submit water samples for bacterial analysis in November 2001 and February 2002. The LOD requested the Water System representative:
 - a. By April 19, 2002, submit a water sample for bacteria analysis to the state laboratory, or a state-certified laboratory, in accordance with NH Admin. Rule Env-Ws 325; and
 - b. Submit samples for bacteria analysis in the appropriate sample months of February, May, August, and November of each year.
7. The Water System received the LOD on April 11, 2002, as evidenced by the signed postal receipt.
8. The Water System failed to submit a water sample for bacterial analysis to the state laboratory or a state-certified laboratory as requested in the LOD.
9. The Water System failed to submit a water sample for bacterial analysis to the state laboratory or a state-certified laboratory during the system's scheduled sampling months of May 2002 and August 2002.

II. NITRATE MONITORING

10. Env-Ws 326.30 requires all transient, non-community water systems to monitor for nitrate on an annual basis.
11. Env-Ws 321.09 requires all public water systems to monitor at the time designated by DES within each compliance period. The Water System was designated to sample for nitrate during the second quarter of 2002.

12. The Water System failed to submit a nitrate sample during the second quarter of 2002, and to date, has not submitted a nitrate sample.

III. PUBLIC NOTICE

13. Env-Ws 351.01 requires a water system that fails to submit any of the routine bacteria samples required by Env-Ws 325 to notify persons served by the system within 30 days of the failure to sample. Within 10 days of providing public notice the water system must submit proof of public notice to DES.

14. The Water System failed to submit proof of public notice to DES for the November 2001 February 2002, May 2002, and August 2002 bacteria sampling violations.

15. Env-Ws 351.01 requires a water system that fails to submit a nitrate sample required by Env-Ws 326 to notify persons served by the system within 30 days of the failure to sample. Within 10 days of providing public notice, the water system must provide proof of public notice to DES.

16. The Water System failed to submit proof of public notice to DES for the failure to submit a nitrate sample in the assigned second quarter of 2002.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated Env-Ws 325.05 by failing to submit water samples for total coliform analysis in November 2001, February 2002, May 2002, and August 2002.

2. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES for the failure to sample for total coliform bacteria in November 2001, February 2002, May 2002 and August 2002.

3. The Water System has violated Env-Ws 326.30 by failing to submit a water sample for nitrate analysis in the second quarter of 2002.

4. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES within 30 days of the failure to sample for nitrate in the second quarter of 2002.

E. ORDER

Based on the above findings, DES hereby orders Sunset View, LLC as follows

1. **Within 10 days of the date of this Order**, submit a total coliform sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit total coliform results to DES.

2. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for total coliform bacteria in November 2001, February 2002, May 2002, and August 2002.
3. **Within 20 days of the date of this Order**, submit proof of public notice required above to DES
4. **Within 10 days of the date of this Order**, submit a nitrate sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit the nitrate results to DES.
5. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for nitrate in the second quarter of 2002.
6. **Within 20 days of the date of this Order**, submit proof of public notice to DES for the failure to sample for nitrate in the second quarter of 2002.
7. Send correspondence, data, reports, and other submissions made in connection with this Order, **other than appeals**, to DES as follows:

Alan Leach
Department of Environmental Services
6 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Voice: (603) 271-2854
Fax: (603) 271-3490
e-mail: aleach@des.state.nh.us


F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Sunset View, LLC of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Sunset View, LLC remains obligated to comply with all applicable requirements, in particular the need to (1) submit a total coliform sample to a laboratory certified to perform total coliform analysis in the scheduled sampling months of February, May, August, and November and (2) to comply with applicable drinking water statutes and rules. DES will continue to monitor Sunset View, LLC's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


George Dana Bisbee
Acting Commissioner

Certified Mail/RRR: 7099 3400 0003 0692 2198

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Assistant Attorney General
Hillsborough County Registry of Deeds
Board of Selectmen, Town of Bedford
US EPA, Region 1